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THE ALLIANCE

... for responsible development of Alaska's Oil, Gas & Mineral Resources

December 12, 2001

Randy Bates
Division of Governmental Coordination
Office of the Governor
P.O. Box 110030
Juneau, Alaska 99811-0030

Re: Draft Proposed ACMP Implementation Regulations

Dear Mr. Bates:

Thank you for the opportunity to submit written comments on the October 1, 2001 draft of proposed Alaska Coastal Management Program ("ACMP") Implementation Regulations. The Alaska Support Industry Alliance ("Alliance"), formed in 1979, is a statewide non-profit trade association consisting of over 415 member companies, organizations and individuals. We are oilfield services companies, transportation enterprises, wholesale and retail businesses, professional firms and private citizens that derive their livelihood by providing products and services to oil and gas development in Alaska. Our membership collectively represents over 35,000 employees working in Alaska's oil patch. Our mission is to promote responsible, safe and environmentally sound exploration and development of Alaska's oil and gas reserves.

The ACMP has an enormous impact on "Alliance" member companies' and contractors' abilities to develop Alaska's oil and gas reserves in a responsible and economically viable manner. Developing a clear, well organized, equitable framework for the ACMP is critical to ensure Alaska's regulatory climate is one that does not unduly discourage private sector investment. Above all ACMP regulations must provide an orderly, understandable, predictable and fair process. *We do not believe these proposed regulations succeed in this regard. In fact, we suggest that the ACMP draft regulations as proposed will be the single most significant deterrent to private sector investment in Alaska's natural resource base and Alaska's future.*

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Randy Bates
Division of Governmental Coordination
Office of the Governor
December 12, 2001
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In developing the following comments the "Alliance" has worked closely with member companies, the Alaska Oil & Gas Association, the Alaska Miners Association and the Resource Development Council of Alaska. Our concerns with the proposed regulations fall into four areas: A) schedule discipline, B) homeless stipulations, C) applicability and scope, and D) the elevation and petition process.

Schedule Discipline

Of utmost importance is the creation of a clear, efficient, and predictable process for making consistency determinations under the ACMP. The unpredictable nature of the various timelines makes the process inherently difficult to navigate. As currently drafted, the regulations prevent an applicant from predicting when the process clock will start, let alone when it will end.

For example, there is no deadline for a determination of completeness, or for publication of the required public notice. Moreover, the start day can be negotiated among the state agencies without the agreement of the applicant. Once the clock does start, extensive schedule modifications can be made at the discretion of the coordinating agency, again without the approval of the applicant. Most troubling is the ability to extend the schedule indefinitely for "complex issues." Until more certainty can be injected into the review schedule, the regulated community will suffer unnecessary costs and delays.

Homeless Stipulations

The current practice of imposing homeless stipulations through the consistency review process is unlawful in our opinion. Unfortunately, the current draft regulations would institutionalize this practice and call into question the legality of the ACMP. In adopting the Alaska Coastal Management Act, the Legislature made a policy decision that the ACMP would not create yet another permit. The Legislature did not authorize the imposition of conditions under the ACMP. Neither the Coastal Policy Council, DGC, nor any other governmental entity is authorized to impose permit conditions to ensure consistency with the ACMP under AS46.40. Yet DGC's regulations attempt to create a "networked" system by delaying project permits so that conditions no agency is authorized to impose can be attached to the agency permits under the auspices of the ACMP. Provisions within the proposed regulations that attempt to create substantive conditioning authority are invalid.

DGC should only determine whether the project, as proposed, is consistent or inconsistent. If DGC believes the project must be modified to be consistent, it should find the project inconsistent and identify the inconsistencies. Most applicants will continue to work with the resource agencies and DGC to address concerns and modify the project, if needed, before the final consistency determination.

Applicability & Scope

The proposed regulations lack clarity regarding applicability and scope. These issues are addressed in numerous provisions, none of which set forth the same standard. Moreover, the regulations provide no objective criteria for determining applicability or scope. Rather, each is left to the discretion of the coordinating agency on a case-by-case basis.

The “Alliance” recommends that applicability and scope be defined by the following three criteria. First, consistency reviews should only be required when the project is located within the defined boundaries of the coastal zone. Second, the scope of the review should be limited to those activities on the C-List. Finally, only those activities, which have a “direct and significant impact to any coastal use or resource”, should be reviewed. Both state and federal statute support use of the “direct and significant impact” standard.

Elevations & Petitions

The proposed elevation and petition processes are areas of unnecessary confusion and significant concern to the “Alliance.” As currently drafted, it is not possible to complete the petition process in 30 days, as state law requires. This discrepancy must be corrected. Furthermore, the two-tiered elevation system is overly cumbersome and of limited benefit, and therefore the “Alliance” proposes the director-level elevation be eliminated. The elevation process should consist only of a single review by the agency commissioners. This change alone will greatly simplify the ACMP process.

Randy Bates
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Conclusion

The "Alliance" believes the ACMP process is intended to serve a procedural coordination function that networks existing resource agency permitting authorities as they apply to projects having a significant and direct impact on coastal resources. In fact, in many cases our members have come to appreciate and rely upon the coordination aspects of the ACMP process. However, the benefits of the coordination function to the regulated community are outweighed in the proposed regulations by lack of schedule discipline, lack of clarity regarding applicability and imposition of unlawful homeless stipulations.

The "Alliance" appreciates the many productive changes that have been incorporated in the latest draft. However, there remain significant and substantial shortcomings in our view. As an alternative to the current process, we suggest DGC consider negotiated rulemaking in an effort to move forward in a productive and meaningful way. This opportunity to make real and effective regulatory improvements to encourage ongoing investment in the economic growth and development of Alaska should not be rushed.

Thank you for your consideration and please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Houle", with a stylized flourish at the end.

Larry J. Houle
General Manager

cc: Governor Tony Knowles
Lieutenant Governor Fran Ulmer
Pat Galvin, Director, DGC
Commissioner Pat Pourchot, DNR
Commissioner Michele Brown, DEC
Commissioner Frank Rue, DF&G